

Oct 30, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEBBIE K.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:19-cv-03078-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 13, 14

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 13, 14. The parties consented to proceed before a magistrate judge. ECF No.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

² Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

1 6. The Court, having reviewed the administrative record and the parties' briefing,
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
3 motion, ECF No. 13, and grants Defendant's motion, ECF No. 14.

4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
6 1383(c)(3).

7 **STANDARD OF REVIEW**

8 A district court's review of a final decision of the Commissioner of Social
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
10 limited; the Commissioner's decision will be disturbed "only if it is not supported
11 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
12 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
13 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
14 (quotation and citation omitted). Stated differently, substantial evidence equates to
15 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
16 citation omitted). In determining whether the standard has been satisfied, a
17 reviewing court must consider the entire record as a whole rather than searching
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,

1 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
4 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
5 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
6 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
7 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
8 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
9 *Sanders*, 556 U.S. 396, 409-10 (2009).

10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within
12 the meaning of the Social Security Act. First, the claimant must be “unable to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which
15 has lasted or can be expected to last for a continuous period of not less than twelve
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
17 impairment must be “of such severity that he is not only unable to do his previous
18 work[,] but cannot, considering his age, education, and work experience, engage in
19 any other kind of substantial gainful work which exists in the national economy.”
20 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from “any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
16 §§ 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to
18 severe impairments recognized by the Commissioner to be so severe as to preclude
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
10 capable of performing other work; and 2) such work “exists in significant numbers
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 **ALJ’S FINDINGS**

14 On October 26, 2015 and November 1, 2016, Plaintiff applied both for Title
15 II disability insurance benefits and Title XVI supplemental security income
16 benefits alleging a disability onset date of August 14, 2015. Tr. 164-70, 182-90.
17 The applications were denied initially and on reconsideration. Tr. 90-96, 98-102.
18 Plaintiff appeared before an administrative law judge (ALJ) on October 6, 2017.
19 Tr. 33-66. On April 13, 2018, the ALJ denied Plaintiff’s claim. Tr. 12-32.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff had
2 not engaged in substantial gainful activity since August 14, 2015. Tr. 18. At step
3 two, the ALJ found that Plaintiff had the following severe impairments:
4 degenerative disc disease of the lumbar spine, left shoulder derangement, asthma,
5 chronic obstructive pulmonary disease (COPD), and hypertension. Tr. 18.

6 At step three, the ALJ found Plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of a listed
8 impairment. Tr. 20. The ALJ then concluded that Plaintiff had the RFC to
9 perform light work with the following limitations:

10 [Plaintiff] can lift and or carry 20 pounds occasionally and 10 pounds
11 frequently; she can stand and or walk 6 hours in an 8-hour workday;
12 she can sit 6 hours in an 8-hour workday; pushing and pulling
13 unlimited except as indicated for lifting and carrying; she can
14 frequently climb ramps and stairs; she can occasionally climb ladders,
ropes, and scaffolds; she can frequently balance and stoop; she is
unlimited in her ability to kneel, crouch and crawl; she is reaching
overhead and in front³ with the left non-dominant hand; she has no

15 ³ The RFC contains two errors with respect to Plaintiff's left arm reaching
16 limitations. Tr. 21. The ALJ gave significant weight to the opinion of state agency
17 medical consultant, Howard Platter, M.D., who opined that Plaintiff was limited to
18 occasional reaching overhead, in front, and/or laterally with her left arm. Tr. 24;
19 *see* Tr. 84-85. In his hypothetical to the vocational expert, the ALJ included a
20 limitation to occasional reaching overhead, in front, and laterally with the left arm.

1 limitation of the right dominant upper extremity; she is unlimited in
2 handling, fingering, and feeling; she must avoid concentrated

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5 Tr. 60. First, the ALJ failed to include the word “occasional” in the RFC when
6 listing Plaintiff’s left arm reaching limitations. See Tr. 21 (“she is reaching
7 overhead”). Based on the language of the RFC, this appears to be a typographical
8 error. Second, while the RFC included Plaintiff’s limitation to occasional reaching
9 overhead and in front with her left arm, the ALJ failed to include in the RFC a
10 limitation to occasional lateral reaching with the left arm. Tr. 21. Plaintiff fails to
11 assert any challenge to this error. Therefore, argument on this issue is waived. See
12 *Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
13 (determining Court may decline to address on the merits issues not argued with
14 specificity); *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (the Court may not
15 consider on appeal issues not “specifically and distinctly argued” in the party’s
16 opening brief). However, any error is harmless, as the ALJ posed a hypothetical
17 to the vocational expert that included a limitation to occasional reaching overhead,
18 in front, and laterally with the left arm. Tr. 60. The vocational expert testified that
19 an individual with such limitations would be capable of performing jobs that
20 existed in significant numbers in the national economy. Tr. 60-63.

1 exposure to extreme cold, fumes, odors[,] dusts, gases, moving
2 machinery, and unprotected heights.

3 Tr. 21.

4 At step four, the ALJ found Plaintiff was unable to perform any past relevant
5 work. Tr. 24. At step five, the ALJ found that prior to July 17, 2017, considering
6 Plaintiff's age, education, work experience, RFC, and testimony from the
7 vocational expert, there were jobs that existed in significant numbers in the
8 national economy that Plaintiff could perform, such as furniture rental consultant,
9 laminating-machine offbearer, and tanning salon attendant. Tr. 25-26. Therefore,
10 the ALJ concluded that Plaintiff was not under a disability, as defined in the Social
11 Security Act, from the alleged onset date of August 14, 2015, through July 16,
12 2017. Tr. 26-27. The ALJ found that, beginning on July 17, 2017, the date
13 Plaintiff's age category changed, considering Plaintiff's age, education, work
14 experience, and RFC, there were no jobs that existed in significant numbers in the
15 national economy that Plaintiff could perform. Tr. 26. The ALJ concluded that
16 Plaintiff was not disabled prior to July 17, 2017 but became disabled on that date
17 and continued to be disabled through the date of the ALJ's decision. Tr. 26.

18 On February 15, 2019, the Appeals Council denied review of the ALJ's
19 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
20 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 her disability insurance benefits under Title II and supplemental security income
4 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
5 issues for review:

- 6 1. Whether the ALJ properly evaluated the medical opinion evidence; and
7 2. Whether the ALJ properly evaluated lay witness evidence.

8 ECF No. 13 at 1-2.

9 **DISCUSSION**

10 **A. Medical Opinion Evidence**

11 Plaintiff challenges the ALJ’s evaluation of the medical opinions of William
12 Drenguis, M.D. and Mary Hardison, ARNP. ECF No. 13 at 4-13.

13 There are three types of physicians: “(1) those who treat the claimant
14 (treating physicians); (2) those who examine but do not treat the claimant
15 (examining physicians); and (3) those who neither examine nor treat the claimant
16 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
17 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).

18 Generally, a treating physician’s opinion carries more weight than an examining
19 physician’s opinion, and an examining physician’s opinion carries more weight
20 than a reviewing physician’s opinion. *Id.* at 1202. “In addition, the regulations

1 give more weight to opinions that are explained than to those that are not, and to
2 the opinions of specialists concerning matters relating to their specialty over that of
3 nonspecialists.” *Id.* (citations omitted).

4 If a treating or examining physician’s opinion is uncontradicted, the ALJ
5 may reject it only by offering “clear and convincing reasons that are supported by
6 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
7 “However, the ALJ need not accept the opinion of any physician, including a
8 treating physician, if that opinion is brief, conclusory, and inadequately supported
9 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
10 (9th Cir. 2011) (internal quotation marks and brackets omitted). “If a treating or
11 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
12 may only reject it by providing specific and legitimate reasons that are supported
13 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
14 F.3d 821, 830–31 (9th Cir. 1995)). The opinion of a nonexamining physician may
15 serve as substantial evidence if it is supported by other independent evidence in the
16 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

17 “Only physicians and certain other qualified specialists are considered
18 ‘[a]cceptable medical sources.’ ” *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir.
19
20

2014) (alteration in original); *see* 20 C.F.R. §§ 404.1513, 416.913 (2013).⁴

However, an ALJ is required to consider evidence from non-acceptable medical sources. *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987); 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013). “Other sources” include nurse practitioners, physicians’ assistants, therapists, teachers, social workers, spouses and other non-medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013). An ALJ may reject the opinion of a non-acceptable medical source by giving reasons germane to the opinion. *Ghanim*, 763 F.3d at 1161.

1. Dr. Drenguis

William Drenguis, M.D. completed a physical evaluation of Plaintiff on April 15, 2017. Tr. 379-84. Dr. Drenguis diagnosed Plaintiff with left shoulder internal derangement, cervical pain, low back pain, and asthma. Tr. 383. He opined that Plaintiff could stand/walk for at least two hours in an eight-hour workday and sit for about six hours in an eight-hour workday. Tr. 383. Dr. Drenguis stated that Plaintiff could lift/carry 20 pounds occasionally and 10

⁴ For cases filed prior to March 27, 2017, the definition of an acceptable medical source, as well as the requirement that an ALJ consider evidence from non-acceptable medical sources, are located at 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013).

1 pounds frequently. Tr. 383. Dr. Drenguis opined that Plaintiff could frequently
2 reach overhead and reach forward with her dominant right upper extremity but
3 could only occasionally reach overhead and reach forward with her left upper
4 extremity. Tr. 384. He also opined that Plaintiff could frequently handle, finger,
5 and feel with both upper extremities. Tr. 384. He noted that Plaintiff could
6 occasionally climb stairs, ladders, scaffolds, and ropes, and could occasionally
7 stoop, kneel, crouch, and crawl. Tr. 383-84. Dr. Drenguis limited Plaintiff's
8 ability to work around dust, fumes, and gases. Tr. 384.

9 The ALJ gave Dr. Drenguis' opinion partial weight. Tr. 23. Because Dr.
10 Drenguis' opinion was contradicted by the nonexamining opinion of Dr. Platter,
11 Tr. 76-87, the ALJ was required to provide specific and legitimate reasons for
12 discounting Dr. Drenguis' opinion. *Bayliss*, 427 F.3d at 1216.

13 a. Dr. Platter

14 Here, the ALJ fully credited the opinion of State agency medical consultant,
15 Howard Platter, M.D. Tr. 24. The opinion of a nonexamining physician may serve
16 as substantial evidence if it is supported by other evidence in the record and is
17 consistent with it. *Andrews*, 53 F.3d at 1041. Other cases have upheld the
18 rejection of an examining or treating physician based in part on the testimony of a
19 nonexamining medical advisor when other reasons to reject the opinions of
20 examining and treating physicians exist independent of the nonexamining doctor's

1 opinion. *Lester*, 81 F.3d at 831 (citing *Magallanes v. Bowen*, 881 F.2d 747, 751-
2 55 (9th Cir. 1989) (reliance on laboratory test results, contrary reports from
3 examining physicians and testimony from claimant that conflicted with treating
4 physician's opinion)); *Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995)
5 (rejection of examining psychologist's functional assessment which conflicted with
6 his own written report and test results). Thus, case law requires not only an
7 opinion from the consulting physician but also substantial evidence (more than a
8 mere scintilla but less than a preponderance), independent of that opinion which
9 supports the rejection of contrary conclusions by examining or treating physicians.
10 *Andrews*, 53 F.3d at 1039.

11 Dr. Platter reviewed the medical record and opined that Plaintiff could stand
12 and/or walk for about six hours and sit for about six hours in an eight-hour
13 workday. Tr. 84. He determined that Plaintiff could occasionally lift/carry 20
14 pounds and frequently lift/carry 10 pounds. Tr. 83-84. He opined that Plaintiff
15 was able to frequently climb ramps and stairs, balance, and stoop, and occasionally
16 climb ladders, ropes, and scaffolds. Tr. 84. Dr. Platter opined that Plaintiff was
17 limited to occasional reaching in front, laterally, and overhead with her left side.
18 Tr. 84-85. He determined that she should avoid concentrated exposure to extreme
19 cold, hazards, fumes, odors, dust, gases, and poor ventilation. Tr. 85. Dr. Platter

1 opined that Plaintiff was capable of performing light work. Tr. 86. The ALJ gave
2 Dr. Platter's opinion significant weight. Tr. 24.

3 Plaintiff fails to assert any challenge to the ALJ's evaluation of Dr. Platter's
4 opinion. Therefore, argument on this issue is waived. *See Carmickle*, 533 F.3d at
5 1161 n.2 (determining Court may decline to address on the merits issues not
6 argued with specificity); *Kim*, 154 F.3d at 1000 (the Court may not consider on
7 appeal issues not "specifically and distinctly argued" in the party's opening brief).
8 Despite Plaintiff's waiver, the Court reviewed the record and finds the ALJ's
9 weighing of Dr. Platter's medical opinion is supported by, and consistent with,
10 other evidence in the record.

11 The ALJ found that the opinion of Dr. Platter was consistent with the
12 objective medical evidence. Tr. 24. As discussed *infra*, the ALJ determined that
13 Dr. Drenguis' opinion was inconsistent with the medical evidence, and thus
14 provided a legally sufficient reason for giving less weight to the opinion of Dr.
15 Drenguis, and for giving more weight to Dr. Platter's opinion.

16 b. Inconsistent with Medical Evidence

17 The ALJ found that Dr. Drenguis' opinion as to Plaintiff's walking, postural,
18 and manipulative limitations was inconsistent with the otherwise generally normal
19 physical examinations. Tr. 23. Relevant factors to evaluating any medical opinion
20 include the amount of relevant evidence that supports the opinion, the quality of

1 the explanation provided in the opinion, and the consistency of the medical opinion
2 with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir.
3 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). An ALJ may choose to
4 give more weight to an opinion that is more consistent with the evidence in the
5 record. 20 C.F.R. §§ 404.1527(c)(4), 416.927(c)(4) (2012) (“the more consistent a
6 medical opinion is with the record as a whole, the more weight we will give to that
7 medical opinion”). Here, Dr. Drenguis opined that Plaintiff’s walking, postural,
8 and manipulative limitations were attributable to her chronic lumbar and cervical
9 sprains, internal derangement of her left shoulder, and asthma. Tr. 383-84.
10 However, the ALJ found that physical examinations throughout the record
11 consistently showed normal gait and full strength, normal bilateral upper
12 extremities except for some limitation of her left shoulder, and mostly normal
13 respiratory findings, which all weighed against Dr. Drenguis’ assessment that
14 Plaintiff was limited to standing/walking for at least two hours in an eight-hour
15 workday, occasional climbing of stairs, occasional stooping, kneeling, crouching,
16 and crawling, and frequent handling, fingering, and feeling. Tr. 23, 383-84; *see*,
17 *e.g.*, Tr. 285-86, 336 (March 2009: an MRI of Plaintiff’s lumbar spine showed
18 good alignment with very well-preserved intervertebral lumbar discs, minimal
19 degeneration at the L5-S1 level, a small central annular tear at the L5-S1 level,
20 mild effusion at the L5-S1 joint, no significant scoliosis, and no evidence of neural

1 foraminal compression); Tr. 356 (January 2015: normal examination results of
2 Plaintiff's cervical, thoracic, and lumbar spine); Tr. 492 (October 2015: Plaintiff
3 had intact range of motion in all extremities and denied weakness or numbness in
4 her left arm); Tr. 376, 499-500 (October 2015: Plaintiff's left shoulder x-rays
5 showed no abnormalities and were described as "normal"); Tr. 393 (November
6 2015: imaging of Plaintiff's cervical spine showed no acute osseous injury); Tr.
7 380, 383 (April 2016: Plaintiff reported that she was "comfortable lifting around
8 20 pounds"; physical examination showed decreased range of motion of Plaintiff's
9 lumbar spine, but full strength in the bilateral upper and lower extremities); Tr. 389
10 (May 2016: Plaintiff displayed normal gait); Tr. 788 (October 2016: Plaintiff
11 denied back pain); Tr. 786 (January 2017: Plaintiff displayed normal gait;
12 musculoskeletal and neurological examinations were normal); Tr. 610 (February
13 2017: Plaintiff displayed normal gait; musculoskeletal and neurological
14 examinations were normal); Tr. 597 (May 2017: Plaintiff displayed normal gait,
15 coordination, and balance; musculoskeletal and neurological examinations were
16 normal); Tr. 782 (August 2017: Plaintiff displayed normal gait; musculoskeletal
17 and neurological examinations were normal); Tr. 509 (January 2015: Plaintiff had
18 no signs of respiratory distress; upon examination, respirations and breath sounds
19 were normal); Tr. 482 (April 2015: Plaintiff had even, unlabored respiratory
20 effort); Tr. 324 (November 2015: Plaintiff's asthma was stable on medications);

Tr. 664 (February 2016: Plaintiff's COPD was stable on medications); Tr. 610 (February 2017: Plaintiff's respiratory examination was normal); Tr. 482 (April 2017: Plaintiff's respiratory effort was even and unlabored); Tr. 597 (May 2017: Plaintiff's respiratory examination was normal). While both parties agree that the ALJ incorrectly found Dr. Drenguis "did not have the benefit of objective imaging of the spine, which were generally mild or within normal limits," the ALJ correctly noted that the MRI of Plaintiff's lumbar spine showed only mild disc bulging of L4-5 and mild bulging of L4-S1. Tr. 22-23 (citing Tr. 336); *see* ECF No. 13 at 8; ECF No. 14 at 10. Based on this record, the ALJ reasonably concluded that Dr. Drenguis' opined walking, postural, and manipulative limitations were inconsistent with the otherwise generally normal physical examinations.

2. Ms. Hardison

Mary Alice Hardison, ARNP, completed a medical report of Plaintiff on August 31, 2017. Tr. 549-50. Ms. Hardison diagnosed Plaintiff with COPD, post-traumatic stress disorder (PTSD), anxiety, cervicgia, and hypertension. Tr. 549. She opined that Plaintiff had to sit and rest due to shortness of breath for 15 to 20 minutes at least three to four times per day, and that Plaintiff would miss work four or more days per week due to difficulty breathing and anxiety. Tr. 549-50. She opined that work on a continuous basis would cause Plaintiff's condition to deteriorate. Tr. 549. Ms. Hardison concluded that Plaintiff was severely limited

1 and unable to lift at least two pounds or stand and/or walk. Tr. 550. The ALJ gave
2 Ms. Hardison's opinion little weight. Tr. 24. Because Ms. Hardison was an "other
3 source," the ALJ was required to provide germane reasons to discount her opinion.
4 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

5 The ALJ found that Ms. Hardison's opinion was inconsistent with the
6 medical evidence of record, including her doctor's recommendation that she walk
7 for 30 minutes every day. Tr. 24. Inconsistency with the medical evidence is a
8 germane reason for rejecting lay witness testimony. *See Bayliss*, 427 F.3d at 1218;
9 *Lewis v. Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001) (germane reasons include
10 inconsistency with medical evidence, activities, and reports). Here, Ms. Hardison
11 opined that Plaintiff was so severely limited that she was unable to lift at least two
12 pounds or to stand and/or walk. Tr. 550. However, the ALJ found that physical
13 examinations showed Plaintiff had full strength, normal gait, and normal station.
14 Tr. 24; *see, e.g.*, Tr. 389, 597, 610, 782, 786 (normal gait); Tr. 492 (intact range of
15 motion in all extremities; Plaintiff denied weakness or numbness in left arm); Tr.
16 380, 383 (full strength in the bilateral upper and lower extremities). The ALJ also
17 cited Plaintiff's report that she was comfortable lifting 20 pounds and her doctor's
18 recommendation that she exercise most days of the week by walking for at least 30
19 minutes. Tr. 24 (citing Tr. 380, 675, 783). Further, the ALJ found that Plaintiff's
20 breathing-related issues were controlled with medication. Tr. 24; *see, e.g.*, Tr. 324,

327 (asthma stable on medications); Tr. 597, 610, 782, 789 (normal respiratory examination); Tr. 482 (respiratory effort was even and unlabored); Tr. 509 (respirations normal, breath sounds normal). Plaintiff argues that the record contains evidence to support Ms. Hardison's conclusion that Plaintiff's anxiety, triggered by stress, contributed to her inability to work, and that the ALJ did not adequately consider the effect of exertion and stress on Plaintiff's asthma symptoms. ECF No. 13 at 11-12. It is the ALJ's responsibility to resolve conflicts in the medical evidence. *Andrews*, 53 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable as it is here, it should not be second-guessed. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The Court must consider the ALJ's decision in the context of "the entire record as a whole," and if the "evidence is susceptible to more than one rational interpretation, the ALJ's decision should be upheld." *Ryan v. Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks omitted). Based on this record, the ALJ reasonably concluded that Ms. Hardison's opinion of disabling limitations was inconsistent with the medical evidence.

B. Lay Opinion Evidence

Plaintiff challenges the ALJ's rejection of the lay witness statements of her son, Jonathan Keefer. ECF No. 13 at 13. An ALJ must consider the statements of lay witnesses in determining whether a claimant is disabled. *Stout v. Comm'r, Soc.*

1 *Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness evidence cannot
2 establish the existence of medically determinable impairments, but lay witness
3 evidence is “competent evidence” as to “how an impairment affects [a claimant’s]
4 ability to work.” *Id.*; 20 C.F.R. §§ 404.1513(a)(4), 416.913(a)(4); *see also Dodrill*,
5 12 F.3d at 918-19 (“[F]riends and family members in a position to observe a
6 claimant’s symptoms and daily activities are competent to testify as to her
7 condition.”). If a lay witness statement is rejected, the ALJ ““must give reasons
8 that are germane to each witness.”” *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th
9 Cir. 1996) (citing *Dodrill*, 12 F.3d at 919).

10 Mr. Keefer submitted a third-party function report on April 12, 2016,
11 describing Plaintiff’s limitations. Tr. 214-21. He reported that Plaintiff was only
12 able to walk about 30 feet before needing to stop and rest, and then she would have
13 to use her inhaler. Tr. 219. Mr. Keefer indicated that Plaintiff had difficulty
14 lifting, squatting, bending, standing, reaching, walking, sitting, completing tasks,
15 and using her hands. Tr. 219. The ALJ considered this evidence and discounted
16 Mr. Keefer’s opinion. Tr. 24. Because Mr. Keefer is a lay witness, the ALJ was
17 required to give germane reasons to discount his statements. *Nguyen*, 100 F.3d at
18 1467.

1 *1. Inconsistent with Medical Evidence*

2 The ALJ discounted Mr. Keefer's opinion because his report of Plaintiff's
3 limited walking and overall functioning was inconsistent with the record. Tr. 24.
4 Inconsistency with the medical evidence is a germane reason for rejecting lay
5 witness testimony. *See Bayliss*, 427 F.3d at 1218; *Lewis*, 236 F.3d at 511-12
6 (germane reasons include inconsistency with medical evidence, activities, and
7 reports). Although Mr. Keefer reported that Plaintiff was only able to walk 30 feet
8 at the most before requiring the use of an inhaler, the ALJ observed, as discussed
9 *supra*, that the objective medical evidence was not consistent with the level of
10 severe limitation alleged. Tr. 24; *see* Tr. 324, 327 (Plaintiff's asthma was stable on
11 medications); Tr. 597, 610, 782, 789 (Plaintiff had normal respiratory
12 examinations); Tr. 482 (Plaintiff's respiratory effort was even and unlabored); Tr.
13 509 (Plaintiff's respirations and breath sounds were normal). The ALJ also noted
14 that Mr. Keefer's statements were inconsistent with Plaintiff's testimony. Tr. 24;
15 *see* Tr. 44 (Plaintiff testified that she could walk "maybe 100 feet"). The ALJ
16 reasonably concluded that this evidence was inconsistent with the level of
17 impairment reported by Mr. Keefer. Tr. 24. Plaintiff asserts the ALJ erred in
18 making this finding, arguing that Mr. Keefer's statements were consistent with the
19 opinions of Dr. Drenguis and Ms. Hardison. ECF No. 13 at 13. As discussed
20 *supra*, the ALJ provided a specific and legitimate reason supported by substantial

1 evidence to discount Dr. Drenguis' opinion and provided a germane reason to
2 discount the opinion of Ms. Hardison. Inconsistency with the record evidence was
3 a germane reason to discount Mr. Keefer's opinion.

4 2. *Vague Statements*

5 The ALJ also found that Mr. Keefer's report was vague and provided
6 minimal insight into Plaintiff's functioning. Tr. 24. Failure to provide support or
7 explanation is a germane reason to discredit the opinion of a nonacceptable
8 medical source. *Molina*, 674 F.3d at 1111-12. Mr. Keefer's report contained
9 minimal narrative explanation. Tr. 214-21. In light of the inconsistencies between
10 Mr. Keefer's opinion and the record as a whole, the ALJ reasonably concluded that
11 the vague statements in Mr. Keefer's report did not sufficiently explain the
12 significant limitations Mr. Keefer noted. Tr. 24.

13 CONCLUSION

14 Having reviewed the record and the ALJ's findings, the Court concludes the
15 ALJ's decision is supported by substantial evidence and free of harmful legal error.
16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. The District Court Executive is directed to substitute Andrew M. Saul as
18 the Defendant and update the docket sheet.

19 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

1 3. Defendant's Motion for Summary Judgment, **ECF No. 14**, is
2 **GRANTED.**

3 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

4 The District Court Executive is directed to file this Order, provide copies to
5 counsel, and **CLOSE THE FILE.**

6 DATED October 30, 2019.

7 s/Mary K. Dimke
8 MARY K. DIMKE
 UNITED STATES MAGISTRATE JUDGE